**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO.21261 OF 2006**

**Dated: 16th October, 2006.**

Between:

Kalla Nookaraju .. Petitioner

And

1. The Authorised Officer under Act 54 of 2002,
   State Bank of India, ADB, Narsipatnam District,
   Visakhapatnam, and another. … Respondents

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**ORDER :**

This writ petition is filed seeking a declaration that the impugned action of the 1st respondent in taking possession of the property vide possession notice dated 1-9-2006 as arbitrary, illegal and without jurisdiction.

The petitioner does not dispute the fact that he availed a term loan of Rs.25,00,000/- from the 2nd respondent Bank in the year 2001. It is also not in dispute that the loan account was classified as Non-Performing Asset (NPA). Thereafter, invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'), the 1st respondent issued a notice dated 18-5-2006 under Section 13 (2) of the Act calling upon the petitioner as well as guarantor to pay the amounts due. The petitioner states that he made a representation on 6-7-2006 explaining the difficulties and requesting settlement of the said amounts as a measure of One Time Settlement (OTS). However, the said offer was rejected by the 2nd respondent and the same was informed to the petitioner by letter dated 31-7-2006. Thereafter, the 1st respondent issued possession notice dated 1-9-2006, which is under challenge in this writ petition.

The only contention raised by the petitioner is that the commercial complex and KNR Lodge constructed by him in an area of 653.40 sq. yards situated in Sy.No.8-1A, Block-I, Ward-I, opposite

to RTC Complex, Narsipatnam, Visakhapatnam is not a security interest created in favour of the 2nd respondent and therefore the respondent has no jurisdiction to proceed against the same. It is pleaded that the petitioner had availed loan by depositing title deed relating to the open land to an extent of 653.40 sq. yards and no mortgage was created in respect of commercial complex and KNR Lodge.

At the outset, it is to be noted that in the notice issued under Section 13 (2) of the Act dated 18-5-2006 the particulars of the credit facilities and the security agreements executed by the petitioner were clearly specified in Schedule-A and Schedule-B. It was also mentioned in the said notice that the petitioner created mortgage by way of deposit of title deeds creating security interest in favour of the Bank and the documents so deposited as mentioned in Schedule-B include commercial complex, opposite to RTC Complex, situated in Sy.No.8-1A, Block-I, Ward-I, Narsipatnam standing on the land to an extent of 653.40 sq. yards. Though the petitioner made a representation in terms of sub-section (3A) of Section 13 of the Act in response to the notice under Section 13 (2) of the Act, he did not raise any objection that the commercial complex in question is not a security interest. The said fact itself shows that the objection now raised by the petitioner is only an after-thought. At any rate, it is not a question which can be enquired into in writ proceedings.

As a matter of fact, any person aggrieved by any of the measures referred to in sub-section (4) of Section 13 of the Act taken by the secured creditor is entitled to make an application to the Debts Recovery Tribunal having jurisdiction within 45 days from the date and on which such measure had been taken. On such application, the Debts Recovery Tribunal shall consider whether any of the measures referred in sub-section (4) of Section 13 of the Act for enforcement of security are in accordance with the provisions of the Act and the Rules made thereunder. If the Debts Recovery Tribunal after examining the

facts and circumstances of the case and evidence produced by the parties comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13 of the Act are not in accordance with the provisions of the Act and the Rules made thereunder, it may by order declare recourse to any one or more measures referred to in sub-section (4) of Section 13 of the Act as invalid and restore the possession of the secured asset to the borrower. Sub-section (5) of Section 17 of the Act also made it clear that such application made by the aggrieved person shall be dealt with by the Debts Recovery Tribunal expeditiously and shall be disposed of within 60 days from the date of such application.

In the light of the said efficacious alternative remedy available, the petitioner cannot straightaway maintain this writ petition.

Accordingly, the Writ Petition is dismissed. No costs.

However, this shall not preclude the petitioner to avail the alternative remedy as available under law.

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G. ROHINI, J.

Dt. 16-10-2006

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